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U.S. DISTRICT COURT E.D.N.Y
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BROOKLYN OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
--x
OSEI MITCHELL,

Plaintiff,

-against-

THE CITY OF NEW YORK, JUSTIN CRACCHIOLA, RICARDO OTERO, FELIX CONCEPCION, and NORMAN LEE,

Defendants.
--x

COMPLAINT

CV 09 0478

JURY TRIAL DEMANDED

JOHNSON, J.

AZRACK, M.J.

Plaintiff, OSEI MITCHELL, by and through his attorneys, **THE LAW OFFICE OF SCOTT G. CERBIN, PLLC**, complaining of the defendants herein, respectfully shows the Court and alleges:

PRELIMINARY STATEMENT

1. This is a civil rights action in which the plaintiff seeks relief for the defendant's violation of his rights secured by the Civil Rights Act of 1871, 42 U.S.C. §§ 1981 and1983; by the United States Constitution, including its Fourth and Fourteenth Amendments, and by the laws and Constitution of the State of New York. The plaintiff seeks damages, both compensatory and punitive, affirmative equitable relief, an award of costs and attorney's fees, and such other and further relief as this court deems just and equitable.

JURISDICTION AND VENUE

2. Jurisdiction of this Court is invoked under 28 U.S.C. § 1343 and 42 U.S.C. §§ 1981 and 1983.

3. The plaintiff further invokes this court's supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over any and all state law claims and as against all

parties that are so related to claims in this action within the original jurisdiction of this court that they form part of the same case or controversy.

4. Venue herein is proper for the United States District Court for the Eastern District of New York under 28 U.S.C. § 1391 (a), (b) and (c).

NOTICE OF CLAIM

5. Plaintiff filed a Notice of Claim with the Comptroller of the City of New York on or about December 3, 2008 within 90 days of the events complained of herein. More than 30 days have elapsed since the filing of the Notice of Claim, and adjustment or payment thereof has been neglected or refused.

PARTIES

6. Plaintiff Osei Mitchell is 24 years old and at all times hereinafter mentioned was and still is a legal resident of the United States residing in the State of New York and the County of Kings. He is of African American ancestry.

7. Defendant THE CITY OF NEW YORK was and is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

8. Defendant THE CITY OF NEW YORK is and was at all times relevant herein a municipal entity created and authorized under the laws of the State of New York. It is authorized to maintain a police department, which acts as its agent in the area of law enforcement and for which it is ultimately responsible. Defendant THE CITY OF NEW YORK assumes the risks incidental to the maintenance of a police force and the employment of police officers as said risk attaches to the public consumers of the services provided by the New York City Police Department.

9. Defendants CRACCHIOLA, OTERO, CONCEPCION, and LEE are and were at all times relevant herein duly appointed and acting officers, servants, employees and agents of THE CITY OF NEW YORK and/or the New York City Police Department, a municipal agency of defendant THE CITY OF NEW YORK. Defendants CRACCHIOLA, OTERO, CONCEPCION, and LEE are and were at all times relevant herein acting under color of state law in the course and scope of their duties and functions as officers, agents, servants, and employees of defendant THE CITY OF NEW YORK, were acting for, and on behalf of, and with the power and authority vested in them by THE CITY OF NEW YORK and the New York City Police Department, and were otherwise performing and engaging in conduct incidental to the performance of their lawful functions in the course of their duties. Defendants CRACCHIOLA, OTERO, CONCEPCION, and LEE are sued individually.

STATEMENT OF FACTS

10. On or about May 30, 2007 in the County of Kings, plaintiff Osei Mitchell was arrested by defendants CRACCHIOLA and OTERO and charged with various felony narcotics offenses pursuant NY Penal Law Article 220.

11. The case was ultimately tried before a jury in Kings County Supreme Court – Criminal Term. Defendants CRACCHIOLA and OTERO were the governments only witnesses. At trial CRACCHIOLA (who is no stranger to USC §1983 litigation) testified that he did not find any drugs on plaintiff until he searched plaintiff back at the 72nd Precinct. OTERO -who was CRACCHIOLA'S partner in this arrest- testified that he never saw any drugs, at all. Upon information and belief OTERO knew CRACCHIOLA did not recover drugs from plaintiff and OTERO refused to commit

perjury in furtherance of the conspiracy. On September 17, 2008 plaintiff was acquitted of each and every count in the indictment.

12. On or about August 2, 2007 defendant was arrested by defendants CONCEPCION and LEE and charged with assault and resisting arrest. These charges arose from plaintiff's objections to being roughed up by plaintiffs CONCEPCION and LEE. The case was promptly dismissed. However, due to the prior pending criminal case, and because of this new arrest, bail was set and an immigration detainer placed on plaintiff by immigration authorities. This detainer was not lifted until September 19, 2008; two days after plaintiff's acquittal in the earlier case.

13. As a result of the foregoing arrests plaintiff was incarcerated for more than one year.

AS AND FOR A FIRST CAUSE OF ACTION
(Deprivation of federal civil rights under the United
States Constitution and 42 U.S.C §§ 1981 and 1983)

14. Plaintiff repeats and reiterates the allegations set forth in the foregoing paragraphs with the same force and effect as though fully stated herein.

15. By their conduct and actions in arresting, imprisoning, physically assaulting, failing to intercede on behalf of plaintiff and in failing to protect him from the unjustified and unconstitutional treatment he received at the hands of other defendants, defendants CRACCHIOLA, OTERO, CONCEPCION, and LEE, acting with animus, and under color of law and without lawful justification, intentionally, maliciously, and with deliberate indifference to or a reckless disregard for the natural and probable consequences of their acts, caused injury and damage in violation of the plaintiff's

constitutional rights as guaranteed under 42 U.S.C. §§ 1981 and 1983 and the United States Constitution, including its Fourth and Fourteenth Amendments.

16. As a result of the foregoing, plaintiff was deprived of his liberty, suffered specific bodily injury, pain and suffering, great humiliation, costs and expenses, and was otherwise damaged and injured.

AS AND FOR A SECOND CAUSE OF ACTION
(Assault and Battery)

17. Plaintiff repeats and reiterates the allegations set forth in the foregoing paragraphs with the same force and effect as though fully stated herein.

18. Defendants CRACCHIOLA, OTERO, CONCEPCION, and LEE did commit assault and battery upon the plaintiff. The acts and conduct of the defendants were the direct and proximate cause of physical injury to the plaintiff and violated his statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.

19. As a result of the foregoing, plaintiff was deprived of his liberty, suffered specific bodily injury, pain and suffering, great humiliation, costs and expenses, and was otherwise damaged and injured.

AS AND FOR A THIRD CAUSE OF ACTION
(False arrest and false imprisonment)

20. Plaintiff repeats and reiterates the allegations set forth in the foregoing paragraphs with the same force and effect as though fully stated herein.

21. By the actions described above, defendants CRACCHIOLA, OTERO, CONCEPCION, and LEE falsely arrested or caused to be falsely arrested plaintiff without reasonable or probable cause, illegally and without a warrant, and without any

right to do so. The acts and conduct of the defendants were the direct and proximate cause of injury and damage to the plaintiff and violated his statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.

22. As a result of the foregoing, plaintiff was deprived of his liberty, suffered specific bodily injury, pain and suffering, great humiliation, costs and expenses, and was otherwise damaged and injured.

AS AND FOR A FOURTH CAUSE OF ACTION
(Negligent infliction of emotional harm)

23. Plaintiff repeats and reiterates the allegations set forth in the foregoing paragraphs with the same force and effect as though fully stated herein.

24. Defendants CRACCHIOLA, OTERO, CONCEPCION, and LEE negligently caused emotional distress and damage to the plaintiff. The acts and conduct of the defendants were the direct and proximate cause of emotional injury to the plaintiff and violated his statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.

25. As a result of the foregoing, plaintiff was deprived of his liberty, suffered specific bodily injury, pain and suffering, great humiliation, costs and expenses, and was otherwise damaged and injured.

AS AND FOR A FIFTH CAUSE ACTION
(Liability of the City of New York
for constitutional violations)

26. Plaintiff repeats and reiterates the allegations set forth in the foregoing paragraphs with the same force and effect as though fully stated herein.

27. At all times material to this complaint, defendant THE CITY OF NEW YORK, acting through its police department, and through defendants CRACCHIOLA,

OTERO, CONCEPCION, and LEE had de facto policies, practices, customs and usages which were a direct and proximate cause of the unconstitutional conduct alleged herein.

28. At all times material to this complaint, defendant THE CITY OF NEW YORK, acting through its police department, and through defendants CRACCHIOLA, OTERO, CONCEPCION, and LEE had de facto policies, practices, customs and usages of failing to properly train, screen, supervise or discipline employees and police officers, and of failing to inform the individual defendants' supervisors of their need to train, screen, supervise or discipline said defendants. The policies, practices, customs, and usages were a direct and proximate cause of the unconstitutional conduct alleged herein.

29. As a result of the foregoing, plaintiff was deprived of his liberty, suffered specific bodily injury, pain and suffering, great humiliation, costs and expenses, and was otherwise damaged and injured.

AS AND FOR A SIXTH CAUSE OF ACTION
(Negligent hiring, screening, retention, supervision and training)

30. Plaintiff repeats and reiterates the allegations set forth in the foregoing paragraphs with the same force and effect as though fully stated herein.

31. Defendant THE CITY OF NEW YORK negligently hired, screened, retained, supervised and trained defendants CRACCHIOLA, OTERO, CONCEPCION, and LEE. The acts and conduct of the defendants were the direct and proximate cause of injury to the plaintiff and violated his statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.

32. As a result of the foregoing, plaintiff was deprived of his liberty, suffered specific bodily injury, pain and suffering, great humiliation, costs and expenses, and was otherwise damaged and injured.

WHEREFORE, plaintiff demands the following relief jointly and severally against all of the defendants:

a. Compensatory damages in the amount of $3,000,000.00 (Three Million Dollars);

b. Punitive damages in the amount of $6,000,000.00 (Six Million Dollars);

c. The convening and empaneling of a jury to consider the merits of the claims herein;

d. Costs and interest and attorneys fees;

e. Such other further relief as this court may deem appropriate and equitable.

Dated: Brooklyn, New York
February 4, 2009

Respectfully submitted,

SCOTT G. CERBIN, PLLC
Counsel for the Plaintiff

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